

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION

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IN RE: ETHICON, INC., PELVIC  
REPAIR SYSTEM PRODUCTS LIABILITY  
LITIGATION  
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MDL NO. 2327

THIS DOCUMENT RELATES TO ALL CASES

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**RESPONSE TO MOTION TO ENFORCE COURT-ORDERED COMMON BENEFIT  
ASSESSMENT AGAINST KLINE & SPECTER AND ETHICON, INC.**

**I. BACKGROUND**

On September 9, 2019, a final judgment of \$2,764,341.35 was entered and paid by Ethicon in the matter of *Beltz, et al. v. Ethicon*, Phila. Court of Common Pleas, June Term 2013, Case No. 0385. Immediately following this payment, Kline & Specter placed 5 percent of the total (\$138,217.17) in escrow pending the Motion to Set an End Date for Common Benefit Assessment filed by Kline & Specter with the Court on August 20, 2019. Via letter on September 13, 2019, Lee Balefsky of Kline & Specter communicated with the Fee and Cost Committee's ("FCC") Henry Garrard that the 5% fee assessment would be paid to the common benefit fund upon ruling of the Motion, stating:

The above-captioned pelvic mesh case [*Beltz, et al. v. Ethicon*, Phila. Court of Common Pleas, June Term 2013, Case No. 0385] was tried to a jury verdict in Philadelphia County. A final judgment of \$2,764,341.35 was entered and paid by Ethicon on September 9, 2019. Kline & Specter has placed 5 percent of the total (\$138,217.17) in escrow pending our Motion to Set an End Date for Common Benefit Assessment filed with the Court on August 20, 2019.  
*See Copy of September 13, 2019 Letter to H. Garrard, attached here as Exhibit "A."*

Mr. Garrard responded to Mr. Balefsky's on September 26, 2019, copying counsel for Ethicon, Inc., stating:

On behalf of the Executive Committee in the Ethicon pelvic mesh MDL (MDL 2327) and as Chairman of the FCC, I am in receipt of a letter dated September 13, 2019 from Lee B. Balefsky on behalf of Kline & Specter informing us that Kline & Specter and Ethicon have not paid the 5% assessment into the Common Benefit when the Judgment in the Beltz case was satisfied by Ethicon. According to the letter \$138,217.17 was not paid into the Common Benefit Fund but was instead placed into an escrow account controlled by Kline and Specter. This non-payment of the Court-ordered 5% assessment into the Common Benefit Fund is in violation of Ethicon PTO's 62 and 134.

Please pay this money into the Common benefit Fund within five (5) business days from the date of this letter and notify me in writing that it has been paid. If the assessment is not paid within that time, we will be forced to make a motion in the District Court against both Kline & Specter and Ethicon to enforce payment of the funds pursuant to the terms of the MDL Court orders.

*See*, copy of Sept. 26, 2019 letter from H. Garrard to L. Balefsky, W. Gage and G. Malone attached as Exhibit "B."

The same date, Mr. Balefsky responded in writing to Garrard's letter, stating:

We are in receipt of your letter dated September 26, 2019 requesting immediate payment to the Common Benefit Fund with regard to the above-captioned pelvic mesh case. As of this writing, Judge Goodwin has yet to rule on Kline & Specter's August 20, 2019 Motion to Set an End Date for Common Benefit Assessments. A ruling on this motion would affect whether the above-named matter would be subject to the 5% common benefit fee assessment. As stated in our previous letter dated September 13, 2019, we are waiting for a ruling on this issue before making payment to the Common Benefit Fund. The money will be held in an escrow account until the motion has been ruled on.

*See*, copy of Sept. 26, 2019 letter from L. Balefsky to H. Garrard (cc'ing W. Gage and G. Malone) attached as Exhibit "C."

## **II. ARGUMENT**

On August 19, 2019, Kline & Specter submitted to the Court a Motion to Set an End Date for Common Benefit Assessment. Multidistrict litigation is aimed at the coordination of pretrial litigation. Because each of the pelvic mesh MDLs has stopped accepting cases, individual cases are being tried, and common benefit work has halted, Kline & Specter proposed that the Court set June 21, 2018 as the cut-off date for any common benefit fee assessments of settlements made or verdict awards paid. The Court has yet to rule on this Motion. Thus, whether or not the 5% fee

assessment is applicable in the matter of *Beltz v. Ethicon* where the judgement was paid on September 9, 2019, following the proposed June 21, 2018 cut off-date, has yet to be decided.

The PSC's motion is needless. The money in dispute is protected.


### **III. CONCLUSION**

For the reasons stated above, Kline & Specter proposes the 5% common benefit assessment in the matter of *Beltz v. Ethicon* remain in escrow pending the ruling on the August 19, 2019 Motion to Set an End Date for Common Benefit Fee Assessments.

Respectfully submitted,

Dated: October 14, 2019

**KLINE & SPECTER, PC**

  
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